



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2001 Assembly Bill 579	Assembly Substitute Amendment 1
Memo published: February 18, 2002 Contact: Ronald Sklansky, Senior Staff Attorney (266-1946)	

In general, subch. II of ch. 560, Stats., provides that an insurer paying fees under subch. III of ch. 76, Stats., may earn a credit against those fees by making a certified capital investment in a certified capital company. A certified capital company will receive its certification if the company meets statutory requirements including the condition that the applicant for certification must be an entity that has as its primary business activity the investment of cash in qualified businesses. The amount of credits available under current law may not exceed \$50 million to be credited at 10% per year for 10 years.

Assembly Substitute Amendment 1 makes the following changes to current law:

1. Amount of Credits

The substitute amendment adds an additional \$100 million worth of credits available under the certified capital company program. Under current law, an investor in a certified capital company may not have more than \$10 million in certified capital investments. The substitute amendment provides that an investor may not have more than the greater of \$10 million or 15% of the total amount of investments that the Department of Commerce may certify. [SECTIONS 11, 12, 13, and 14.]

2. Expanded Eligibility

The substitute amendment expands the eligibility for credits under the certified capital company program to insurance companies that pay income taxes under subch. VII of ch. 71, Stats. According to the Department of Commerce, the practical effect of the amendment is to significantly expand the ability of insurance companies domiciled in Wisconsin to participate in the program. A report from the department states that as of October 29, 2001, there were 32 insurance companies participating in the program; two of these companies were domiciled in Wisconsin. [SECTIONS 1, 2, 3, 4, 30, and 31.]

3. Qualified Distribution

Current law authorizes a certified capital company to make specific distributions if certain conditions are met. The substitute amendment makes the following alterations:

- a. Current law provides that a qualified distribution may be made by a certified capital company to its equity holders for the costs of forming, syndicating, managing, or operating the company. The substitute amendment limits the distribution for forming and syndicating the company to an amount not to exceed 5% of the company's total certified capital.
- b. Current law authorizes a distribution for the reasonable and necessary fees paid to its equity holders for professional services related to the operation of the certified capital company. The substitute amendment limits these fees to an amount not to exceed 5% of the company's total certified capital, unless approved by the Department of Commerce.
- c. Current law authorizes a qualified distribution for a projected increase in federal or state taxes, including penalties and interest on those taxes, of the equity owners. The substitute amendment eliminates the authorization to make a qualified distribution for penalties and interest on projected increases in federal or state taxes.
- d. The substitute amendment authorizes a qualified distribution for the reasonable costs associated with applying for qualified federal funding programs, as determined by the Department of Commerce.

[SECTIONS 5 to 8.]

4. Certification

Current law provides that the Department of Commerce must certify a person as a certified capital company if, in part, the person has, at the time of application, a net worth of at least \$500,000 and at least \$500,000 in cash, cash equivalents, and marketable securities. The substitute amendment clarifies that these monetary requirements must exist both at the time of application for certification and on the date on which the person is certified. Further, the certified capital company may not return to investors any investments made in the company prior to its certification for the purpose of enabling the company to meet these monetary requirements. Finally, the substitute amendment also provides that a person seeking certification must agree to maintain in Wisconsin an investment office and staff actively engaged in making investments. [SECTIONS 9, 10, and 15.]

5. Employment in State

Current law provides that at least 75% of the employees of a qualified business must be employed in Wisconsin. The substitute amendment provides that a qualified business must either employ 75% of its employees in Wisconsin or must pay at least 75% of its total payroll to employees who are employed in Wisconsin. [SECTIONS 16, 17, 19, and 20.]

6. Required Investment

Under current law, a certified capital company must ensure that within three years after the investment date for a particular investment pool, at least 30% of the investment pool must be placed in qualified investments. The percentage increases to 50% within five years. The substitute amendment increases these requirements to 70% and 100% within seven and 10 years, respectively. [SECTIONS 21 and 22.]

7. Reporting

The substitute amendment increases the reporting requirements of a certified capital company. For example, information that must be reported on an annual basis under current law will be required to be reported semi-annually under the substitute amendment. [SECTIONS 23 and 26 to 29.]

8. Audit

The substitute amendment authorizes the Joint Legislative Audit Committee to direct the Legislative Audit Bureau to perform a performance evaluation audit of the certified capital company program, which must include evaluating the overall effectiveness of the program. [SECTION 32.]

9. Other Items

Under current law, a qualified business, in part, is one that during its two most recent fiscal years has had an average annual income of not more than \$2 million. The substitute amendment provides that for these purposes a partnership, limited liability company, or tax-option corporation must calculate its net annual income based on the income of its partners, members, or shareholders that is related to the economic activity of the partnership, limited liability company, or tax-option corporation. [SECTION 18.]

The substitute amendment provides that if a qualified business violates the statutory agreement required to be made with a certified capital company, then the certified capital company's qualified investments with respect to that qualified business must be valued at 1/2 of the actual amount invested by the certified capital company. Inadequate amounts of investment by a certified capital company may lead to disqualification of an investment pool and decertification of the company. [SECTIONS 24 and 25.]

On November 1, 2001, the substitute amendment was adopted by the Assembly on a voice vote. On November 6, 2001, Assembly Bill 579 was passed by the Assembly on a vote of Ayes, 69; and Noes, 29.

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